



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/157246

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2014, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Sheboygan County Department of Human Services in regard to Foster Care, a hearing was held on August 13, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether the agency has offered evidence sufficient to demonstrate that it correctly revoked Petitioner's foster home license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

By:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Atty. Carl K. Buesing, Sheboygan County Corporation Counsel representing
Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. This appeal was filed by both the above named Petitioner and her spouse; they are referred to as Petitioners herein. Petitioners are residents of Sheboygan County

2. Petitioners applied for a foster care license in June 2011 and that application was ultimately approved in early 2012. That license was renewed in early 2014.
3. Petitioners were sent a letter dated April 21, 2014 that informed Petitioners that their foster care license had been revoked effective April 21, 2014 (or the removal of foster children from the home, whichever was first). The reason for the revocation was that Petitioners had withheld relevant information in the license application and renewal process thereby failing to provide truthful and sufficient information to the agency so that it could determine if Petitioners met the licensing requirements.
4. The information that Petitioners failed to disclose was sexual behavior had occurred between children residing in the home. Petitioners have three biological children and three adopted children. Through circumstances unrelated to this case, law enforcement officials became aware of an allegation that one of Petitioner's children, J, had sexual contact with another of their children, K. At the time of the sexual behavior, J was approximately 14 years of age and K about half that age. The best available information to the law enforcement agency is that this occurred in the summer of 2011. Both J and K had pants and underwear down and J rubbed his privates against K's privates. This occurred on about three occasions. A referral to the Sheboygan County juvenile justice system resulted in a consent decree for J. J is one of Petitioners' adopted children and has some development and/or cognitive challenges.
5. Petitioners knew of the behavior in 2011. They did take steps to make sure young man had counseling and initiated safety plans in their home to prevent J from being alone with other children in the home. They did not, however, report the incident to the agency during the 2011 licensing process or during the early 2014 renewal of that license. The reason for not doing so was that the agency didn't ask the right question.

DISCUSSION

A foster home license may lawfully be revoked if the licensee fails to meet the minimum requirements for a license. *Wis. Stat. § 48.75(1d)*. In order to meet the minimum requirements for a license, it is necessary to meet all requirements contained in Department of Children and Families (DCF) foster care rules unless an exception has been granted. *Wis. Stat. § 48.67; Wis. Admin. Code §§ DCF 56.02(2) & 56.05(1)(c)1*. Furthermore, a licensee is required to be familiar with DCF foster care rules and comply with their requirements. *Wis. Admin. Code § DCF 56.05(1)(c)intro. & 56.05(1)(c)1*. Thus, a foster home license may be revoked for any failure to meet a requirement contained in DCF foster care rules (absent, where allowed, an exception).

Relevant here is the following law:

DCF 56.05 Licensee qualifications. (1) PERSONAL REQUIREMENTS AND BACKGROUND. (a) *General.* 1. A person licensed to operate a foster home shall be a responsible, mature individual who is fit and qualified, who does not abuse alcohol or drugs or have a history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children or operating a foster home, as described in Ch. DHS 12, and who exercises sound judgment and displays the capacity to successfully nurture foster children.

2. The applicant or licensee shall give truthful and sufficient information to enable the licensing agency to verify whether or not he or she meets the requirements under subd. 1. Giving false information or withholding relevant information shall constitute grounds for denial or revocation of the license.

...

Wis. Admin. Code, §DCF 56.09(1)(a)(1) and (2).

The only factual issue here is whether the agency social service personnel conducting the application and renewal processing inquired as to sexualized behavior in the home of Petitioners. They argue that the agency never asked them directly about this type of incident and did not feel they had misled the agency or failed to report required information. Further, Petitioners maintain that they took care of the situation with counseling and with rules within their household governing the interaction between the children. Finally, they note that J's delinquency case was handled with a consent decree.

Agency personnel have a different recollection and contend that Petitioners were asked if there were any sexualized behaviors exhibited by children in the home. I found the agency staff to be quite credible as to this issue. This would be a standard line of inquiry in the application and license renewal process.

Regardless, I am sustaining the revocation. Quite frankly, it is inconceivable to me that this was not reported. Though Petitioners may have taken steps to be sure that the young man had counseling and that he was not alone with other children in the home, that is not the issue here - the question here is whether the failure to report this incident at the time of the 2011 foster care application or the 2014 renewal justifies revocation of Petitioner's foster care license. And, ultimately, that is a question as to whether or not Petitioner's possess the sound judgment necessary to be foster parents.

Being a foster parent entails a partnership between a social service agency and the foster parents. The agency certainly has to assess a child's needs and strengths. *See Wis. Admin Code, §DCF 56.01(1)*. Both have a duty to protect the health and safety and to promote the welfare of children in care. Regardless of the circumstances for the placement of children in the foster care system, it has to be a traumatic event for the child. The claim that that a question was not phrased properly is, quite frankly, dumbfounding. The agency absolutely needed to be aware of the sexualized behavior in the home so that it could properly assess the needs of any potential placement. Not to do so is at best an error in judgment and at worst an arrogant view of one's own role in this partnership or a self-centered fear that no more children could be placed or adopted if the report was made. The failure to report could even have put J's future in jeopardy had the agency unwittingly placed a child with sexualized behaviors that might have compounded J's own issues.

Again, I am sustaining the agency decision to revoke Petitioners' foster home license for failing to report sufficient information to the agency.

CONCLUSIONS OF LAW

That the agency properly revoked Petitioners' foster home license for failing to report sufficient information to the agency as required by Wis. Admin. Code, § DCF 56.05.

NOW, THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

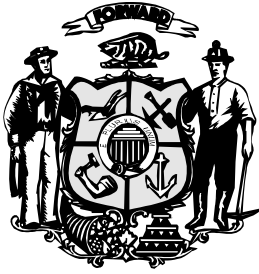
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of September, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 25, 2014.

Sheboygan County Department of Human Services
DCF - Foster Care
Attorney Carl Buesing